

AIRGRAM

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AIR PRIORITY

HANDLING INDICATOR

TO :

DEPARTMENT OF STATE

FROM : Amembassy MANAGUA

DATE: September 23, 1964

SUBJECT: Status of Great and Little Corn Islands Under the Bryan-Chamorro Treaty.

REF : ARA
Embassy A-71

The Embassy's airgram referred to discussed the increasing criticism directed by Nicaraguans toward the Bryan-Chamorro Treaty and suggested consideration be given to what action should be taken in the event that emotion on the issue reaches a harmful level. A related question which the Embassy believes should also be considered is the status of Great and Little Corn Islands under the Treaty.

Article II of the Treaty provides in part that: "...the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island. . ." "The Government of the United States shall have the option of renewing for further term of ninety-nine years the above leases. . .it being expressly agreed that the territory hereby leased. . . shall be subject exclusively to the laws and sovereignty of the United States during the terms of such lease. . ." Although the United States has never exercised the rights over the two islands granted to it by the Treaty, in the Embassy's view there remains the question of whether failure to exercise sovereignty relieves the United States from the obligations which sovereignty carries with it.

This has so far been, and hopefully will remain, an academic question, but it does not require too great a stretch of the imagination to conceive of situations in which this grant of sovereignty could become embarrassing to the United States. American citizens arrested by Nicaraguan authorities or American businesses which would rather trade under United States than Nicaraguan Law ^{could} conceivably bring suit against the United States under the terms of Article II of the Treaty if they could prove themselves damaged by the failure of the United States to exercise

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Clearances:

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its rights of sovereignty. Under certain circumstances, the question of whether United States customs, taxation or immigration laws ought to be applicable on the islands could also become serious.

An incident which occurred a few weeks ago serves to underscore the fact that a problem of the type mentioned above could arise at any time. A group of young Americans purchased salvage rights to a Canadian freighter aground off the coast of Great Corn Island. However, when they began to dismantle the ship, they were stopped by the local commander of the National Guard who appropriated the more valuable of the salvaged material for himself. Fortunately, the group of Americans was able to obtain a letter from General Somoza ordering the local commander to surrender the material, and the Americans thereafter have had good relations with local authorities. We have since speculated on what our position would have been if the General had not been accommodating and the young Americans had appealed for U.S. assistance under the terms of the Bryan-Chamorro Treaty.

Several years ago the Embassy wrote a detailed despatch on this same subject which, however, was never submitted to the Department. Much of the comment and analysis contained in this despatch is as valid today as when it was written, and it is enclosed as of possible interest. We invite the Department's particular attention to the penultimate paragraph on page three which reads as follows:

"It would appear that there are four courses of action which could be followed: 1) continuance of the status quo, ignoring the existence of any conflict between the existing administration of the islands and the treaty provision concerning United States law and sovereignty; 2) amendment of Article II of the treaty to remove the provisions concerning the applicability of United States law and sovereignty on Great and Little Corn Islands, until such time as the United States might decide to establish some government installation on either island; 3) termination of the lease on the islands in return for an option to lease the islands for a specified period; or 4) an attempt to enforce United States law on the island, if the maintenance of the lease in its present form is believed to be desirable. "

As the writer of the despatch points out, the first course of action, undoubtedly the easiest, leaves the United States open to the possibilities of embarrassment noted above. The second and third courses of action would require renegotiation of the Treaty, while the fourth would create serious difficulties in our relations with Nicaragua. Under present circumstances, the Embassy believes that any course of action other than the first would be unwise. However, as soon as the present controversy in Nicaragua over the Bryan-Chamorro Treaty subsides, the

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Embassy believes that the United States would be well advised to consider ways and means of renouncing the sovereignty over the Corn Islands it has never exercised but which could nevertheless be a source of considerable difficulty.

For the Chargé d'Affaires ad interim

Edward R. Cheney
Edward R. Cheney

First Secretary of Embassy

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Enclosure

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DATE: April 21, 1960

REF: A Nicaraguan Canal, Memorandum prepared by Marjorie M. Whiteman,
Assistant Legal Adviser, September 20, 1956.

SUB: POLITICAL: Status of Great and Little Corn Islands

Background

The Department's attention is called to the text of the Bryan-Chamorro Treaty which went into effect on June 22, 1916 and which is regarded by the Governments of the United States and Nicaragua as binding and of full effect and to the conclusions of the legal memorandum under reference above. By the Bryan-Chamorro Treaty, the United States Government procured a lease "for a term of ninety-nine years" of Great and Little Corn Islands (Article II). In the same article, Nicaragua grants the United States as a right the option of renewing the lease for a further term of ninety-nine years upon the expiration of the term of the lease. It was also expressly agreed that "the territory hereby leased...shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease...and of any renewal or renewals thereof" (Article II).

It should be observed that the lease of Great and Little Corn Islands is not affected by the exchange of notes between the Minister of Nicaragua and Secretary of State Lansing, dated March 6 and March 11, 1916 respectively. The issue raised by the Nicaraguan Government was "whether its real interpretation is that of an option or of a definitive sale of the canal route", which is referred to in Article I of the Bryan-Chamorro Treaty. Secretary Lansing's reply was also limited to concurring in the Nicaraguan interpretation that the United States has acquired "The exclusive option in perpetuity to construct an inter-oceanic canal by the Nicaraguan route."

The only time that the propriety of the lease of Great and Little Corn Islands was ever raised internationally was in the September 30 and October 2, 1916 amplifications of the complaint originally filed by El Salvador against Nicaragua before the Central American Court of Justice on August 14, 1916. El Salvador maintained that the concession by Nicaragua to the United States of a right to establish a naval base on the Gulf of Fonseca and the lease of Great and Little Corn Islands violated Articles II and IX of the 1907 Washington General Treaty of Peace and Amity. It would appear that El Salvador was really interested in the naval base on the Gulf of Fonseca. In any event, the legal memorandum under reference recommends that any recognition of the rights of

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El Salvador to any matter under the Bryan-Chamorro Treaty should not be based on the decisions of the Central American Court of Justice, which found that Nicaragua had indeed violated Articles II and IX of the Washington General Treaty of Peace and Amity.

Discussion

The present problem with regard to Great and Little Corn Islands concerns the provision of the Bryan-Chamorro Treaty that "the territory hereby leased...shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease...and of any renewal or renewals thereof" (Article II). The issue might be hypothetical if the two islands were sandy spits, sparsely inhabited, with no products which entered into international commerce.

Great Corn Island is an island of approximately 7 miles in circumference which today has a population of approximately 1500 inhabitants. The population has been growing recently with the prospect of the airfield, and an Embassy officer was informed by local leaders and the Jefe Politico of the Nicaraguan Department of Zelaya that the population was expected to increase further. The Protestant Episcopal Church maintains a mission church with a resident priest, and the Baptists also have a church. The Roman Catholic Church and the Adventists send missionaries over periodically from the mainland.

Economically, Corn Islands's major cash industry is the processing of its annual crop of 12 million coconuts to make copra and coconut oil. Corn Island also has small scale lobster fishing and cattle and hog raising. Three small factories process the copra and some of it is exported to the United States. Much of the copra and coconut oil is shipped to Nicaraguan territory for use in the manufacture of soap in Managua.

The issue immediately arises as to the proper customs duty which should be paid, if any, on copra imports into the continental United States from territory leased by the United States Government and subject exclusively to "the laws and sovereignty of the United States". Conversely, there is the issue of what import duties, if any, may properly be assessed by Nicaragua on copra and coconut oil. Furthermore, should not the processors of copra and coconut oil be paying United States income taxes?

Little Corn Island is seven miles from the larger island and has a light house. It is also inhabited but has not recently been visited by Embassy officers. There is reportedly some fishing and cattle raising.

Great Corn Island's economy is not to remain static. The Nicaraguan Air Line, LANICA, is constructing an air field on the island, which it hopes to have finished in four or five months. The company then plans to begin operations to the island and hopes to stimulate tourists to visit the island and enjoy its miles of beautiful sandy beaches. There is serious discussion of building one or more hotels and of improving the

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now primitive tourist facilities. There is also discussion of making the island a free port. Further development of Great Corn Island could make it of interest to foreign flag airlines, just as the Colombian Island of San Andres, further offshore, is serviced by several international carriers. An American citizen is known to have recently purchased from a resident of San Andres approximately two miles of the best beach front on Corn Island, for development as a tourist resort, under the apparent impression that she was obtaining clear title. Another American citizen, Severino Kennedy, who was associated with Wills Bowers, Inc., an American company, was recently reported to be still interested in establishing a shrimp and lobster fishing and freezing enterprise on Great Corn Island, using shell fish caught in adjacent waters.

The development of the island obviously raises the issues of the application of United States civil aviation legislation to the island and of U.S. regulation or protection of fishing in adjacent waters. There is also the possibility of significant currency, commercial or even smuggling activities on United States leased territory once air service is established, and even more important implications if a free port is established. Clear title to property will be an important consideration in development of the island. For example, in order to make way for the airfield the Nicaraguan Government and LANICA are exerting pressure on an American operated Adventist mission to accept another location on the island in lieu of its present location, but do they, in fact, have the power to compel the mission to move if it does not wish to?

Even more important is the relationship between the attitude taken by the United States with regard to Great and Little Corn Islands and that currently being taken with regard to the leased Panama Canal Zone. The United States flag, for example, does not now fly over Corn Island.

It would appear that there are four courses of action which could be followed: 1) continuance of the status quo, ignoring the existence of any conflict between the existing administration of the islands and the treaty provision concerning United States law and sovereignty; 2) amendment of Article II of the treaty to remove the provisions concerning the applicability of United States law and sovereignty on Great and Little Corn Islands, until such time as the United States might decide to establish some government installation on either island; 3) termination of the lease on the islands in return for an option to lease the islands for a specified period; or 4) an attempt to enforce United States law on the island, if the maintenance of the lease in its present form is believed to be desirable.

The first course would be the easiest in some respects, but it raises serious doubts as to whether the United States can legally pursue such a policy and whether it may not result in complicated legal problems at some future date. For example, a suit for negligence might be brought against the United States Government by a United States citizen, or his heirs, for injuries sustained in a LANICA air crash on Corn Island for failure of the Government to enforce United States air safety regulations

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pursuant to the exclusive jurisdiction granted by the Bryan-Chamorro Treaty. Another consideration is the possible precedent of such a course with regard to the Panama Canal Zone.

The second and third courses would apparently require the negotiation of a new treaty with Nicaragua, thus opening up the question of renegotiation of other parts of the Bryan-Chamorro Treaty or even abrogation of the whole treaty. The treaty is frequently attacked by left wing labor leaders and the Communist infiltrated A.D.U., the political coalition of left wing opposition parties. The Embassy assumes, in this connection, that the Austrian Assets Treaty and the earlier precedents cited in the Department's legal memorandum on that treaty, which was acquiesced in by the Attorney General, have allayed any serious contention that the property rights on Corn Island would have to be returned by legislation rather than by treaty because of Article IV, Section 3 (2) of the Constitution. This provision reads: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States...."

If, on the other hand, it were decided that the cession of the property rights on Great and Little Corn Islands were desirable and that return should be made by act of Congress, it might be possible to take note of this act in an exchange of notes with the Nicaraguan Government, leaving the treaty itself unamended. The United States legislation would be the renunciation of a right which the United States has not chosen to exercise in forty-four years and the exchange of notes would confirm the current status of the islands, namely that they are to all intents and purposes now under Nicaraguan sovereignty and administration.

The fourth course can be expected to arouse the opposition of both the Government, which is interested in the potential tourist revenue from the island, and the Somoza family which is financially interested in the development of the island and in LANICA. Opposition on nationalist grounds can also be expected from the left. Conservative opposition must, for the moment, be mitigated by the fact that the party's leader, General Emiliano Chamorro, was the signatory of the Bryan-Chamorro Treaty for Nicaragua.

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